

Taxation of Inbound Private Investment

Professor Mindy Herzfeld

**University of Florida Levin College of Law
Graduate Tax Program**

Syllabus

Compressed Course Spring Break 2024

Taxation of Inbound Private Investment

LAW 7931

Professor Mindy Herzfeld

Office: 374

Phone: 352-273-0932

Office Hours: Tuesday 1-3PM or by appointment, scheduled by email

This course will meet for 4 days during spring break, Monday March 11-Thursday, March 14.

Class meetings will take place at the offices of local law and accounting firms in Miami.

The location and precise times for meeting each day are noted below.

A. Course Materials: The required reading/video links/tools to be utilized can be accessed through links provided below or are posted on Canvas.

The course will loosely follow chapter 5 of my book on Structuring Cross-Border Transactions: U.S. Tax Considerations. [A copy of the book will be available on reserve in the library and the e-book version as well; it is also available to purchase online from Amazon or the e-version is available for purchase at

[Amazon.com: Structuring Cross-Border Transactions: US Tax Considerations: 9789403528908: Herzfeld, Mindy: Books](https://www.amazon.com/Structuring-Cross-Border-Transactions-US-Tax-Considerations/dp/9789403528908/)].

Readings from the Code and the regulations (and any treaty articles/cases and/or revenue rulings assigned) are mandatory. Reviewing at least one of the secondary sources ("listed as background") is highly recommended to make sense of the Code and regulations; you may choose from one of the available options.

B. Topics: The topics for class, along with the assigned readings are described in the pages that follow.

C. Grade: Your grade will be based on the following:

2. Class Participation/Attendance. (20% of grade). Because this is a compressed course, attendance is mandatory. You will be expected to come prepared to the lectures each day, having read the assigned materials, and to participate with the guest lecturers throughout the week.

3. Problem sets (80% of grade) You will be required to submit (by March 31) final versions of the problem sets presented during the week.

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67

D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

Problem Sets will be graded on the following metrics (5 points each):

- Accuracy of solutions
- Demonstration of utilization of primary sources
- Timeliness
- Clarity of writing and organization
- Comprehensiveness of solutions

E. Reading Assignments. You should be prepared to discuss the reading assignment for each class.

F. Attendance. Per ABA requirements, you will be expected to attend a minimum of 80 percent of all classes. Because this is a compressed course, attendance at each class is required and absence is reflected in the grading, without an excused absence from Student Affairs.

Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at:

<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>.

G. Class Preparation

Because this is a compressed course, you should be prepared to spend several hours of preparation time before the course begins. During the week of the course, you should be prepared to spend several hours each day reading and preparing assignments. In total, you can expect to spend approximately 30 hours in preparation for class, including reading and working on problem sets.

H. Guest Lecturers. Each class will be led by a different practitioner. These individuals are giving their time in large part because they enjoy interacting with you. You will need to be prepared with the readings and engaged in the problem sets for discussion with them.

Summary of the Course

Taxation of cross-border transactions is a complex topic that incorporates many different areas of tax law, including international tax, subchapter C, and partnership taxation. This course will build on all those topics and focus on one particular aspect of cross-border taxation – taxation of inbound private investment. Basic knowledge of international tax law and corporate tax is required. Some familiarity with partnership taxation is recommended.

The course will be led by Miami practitioners whose practices focus on cross-border inbound taxation.

Assigned readings are noted below.

Objectives of the course

This course has a number of objectives:

1. To become familiar with different structures relevant for inbound private investment;

2. To understand the different Code provisions that are relevant in structuring such investments and analyzing their tax outcomes;
3. To apply that knowledge to structuring questions that arise in practice;
4. To appreciate the type of analysis and risk management utilized in advising clients regarding the tax consequences of cross-border investments.

Required Course Materials

All required readings are posted in canvas or linked to in the syllabus.

1. **Reference Materials**. Additional reference materials are noted below and for each class.
2. **Office Hours**. I will be available Wednesday afternoon March 15 for in-person office hours. I will also be available for phone/zoom consultations, which can be scheduled by email at herzfeld@law.ufl.edu.

Reference Materials

The primary secondary source is chapter 5 of my book, Structuring Cross-Border Transactions: U.S. Tax Considerations (2022). Physical and electronic copies are available at the library.

Other helpful secondary source materials include:

- International Taxation in a Nutshell, 13th ed. Available online through West Academic Study Aids (for free) or via Amazon.
- U.S. International Tax Portfolios, published by Bloomberg/BNA. Specific portfolios for each topic below are indicated in the assigned reading. The portfolios are available online at Bloomberg's website.
- Bittker & Lokken, Fundamentals of International Taxation. Specific sections are noted below. You can access the treatise online but if you are serious about pursuing this area of the law, you may wish to purchase a copy of the treatise. The hard copy of the 1-volume book that focuses on international taxation is only available as a student edition and is not available for purchase online.

Class 1: Monday, March 11

Morning Session (10am-1PM)

Inbound Investment into the United States: Primer, including financing, structuring, sourcing rules, withholding, and permanent establishment

Presentation by James Barrett, Paul Blanchard, Mathew Slootsky, Baker McKenzie, 1111 Brickell Ave, Suite 1700

Required Reading: Primary Sources

IRC §§ 163(j), 861-865, 871, 881, 882, 884, 897, 894, 163(j), 1441, 1442, 1446, 1471-1474, 7701(b)

Reg. §§ 1.881-3, 1.894-1(d), 1.1441-5, 301.7701-1, 2, 3

US Model Treaty Art. 5, 7, 22

Additional Background Reading

International Tax in a Nutshell, Chapters 3, 4, 5 and § 2.01 on entity classification (to review if you are not up to speed on this topic)

BNA Portfolio No. 910-2d, 6855.

Bittker & Lokken ¶ 67.1- 67.6

Afternoon Session (still at BM) (2:00-3:00pm)

Primer on Income, Estate, and Gift Tax Considerations applicable to Non-U.S. Persons with U.S. Investments

By: Daniel Hudson, Binger Singerman, Miami (2-3pm)

Required Reading: Primary Sources

IRC §§ 651; 661, 672, 679, 668, 684, 877A, 2501, 2503, 2505, 2511, 2513, 2523, 2663, 2001, 2010(c), 2038, 2101-2108, 2105(b), 2502, 2641(a), 7701(a)(3)

Reg. §§ 301.7701-4

Rev. Rul. 2004-64

Background Reading: Secondary Sources

1. Bloomberg BNA Portfolio 854-4th
2. Bittker & Lokken ¶ 65.5-65.8, Chapter 83

Class 2: Tuesday, March 12

Morning Session (10am-12pm)

Income Tax, Estate & Gift Planning Considerations in Inbound Investment

At Greenberg Traurig, Miami. Presentation by Seth Entin

Required Reading: Primary Sources

IRC §§ 672; 951; 957; 958; 1014; 1291-1298

Reg. §§ 301.7701-2, §301.7701-3, §301.7701-4.

Fillman v. United States, 355 F.2d 632 (Ct. Cl. 1966)

TAM 9507044

Additional Background Reading

Bloomberg Portfolio No. 837-4th I, VI, VII, VIII; 6420 I-VII.

Bittker & Lokken ¶ 67.5, 134.1-.4

Class 3: Wednesday, March 13

Morning Session (10:00am-noon)

Presentation by Chris Callahan, Fox Rothschild

Inbound USTB Considerations

Required Reading: Primary Sources

IRC §§ 861, 862, 863, 864, 865

US Model Treaty Art 5, 7

Real Estate

Afternoon Session (1:30pm-3:00pm)

Presentation by Stewart Kasner and Carolina Nuche, Holland & Knight, 701 Brickell Ave Unit 3300.

Taxation of Inbound Investment in US Real Estate

Required Reading: Primary Sources

IRC §§ 871(b); 882(a); 897; 1445

Reg. §§ 1.897-1; 1.897-2; 1.1445-2

Additional Background Reading

Herzfeld ¶ 503.3.2, 506.2

BNA Portfolio No. 6540

Bittker & Lokken Chapter ¶ 67.7

Diego Embón, Steffen Kranz & James A. Schmidt, *Tax-Efficient Real Estate Investment: A Multijurisdictional View*, 92 TAX NOTES INT'L 1299 (2018).

Michael Bolotin, *Why Private Investment Funds Are Using REITs to Invest in Real Estate*, 166 TAX NOTES FED. 1087 (2020).

Reception to follow at H&K offices

Class 4: Thursday, March 16

Inbound Private Equity: Top-Side Considerations (10am-11:30am)

Presentation by Devon Bodoh, Weil, Gotshal & Manges, 1395 Brickell Avenue, Suite 1200

Weil will host a breakfast beginning at 9:30.

Required Reading: Primary Sources

IRC §§ 721, 731, 741, 871(b), 881, 892, 1446

US Model Treaty Art 10, 11, 22

Other Background Reading

Herzfeld ¶ 502, 503

BNA Portfolio No. 6585

Bittker & Lokken ¶ 67.6

Afternoon

Private Equity: Inbound Real Estate (12:00pm-1:30pm)

At KPMG Miami, 78 SW 7 Street, Suite 1200

Presentation by: James Sanderson, Gustavo Gari, Kimberly Majure (Washington DC)

Required Reading: Primary Sources

IRC §§ 721, 731, 741, 871(b), 881, 892, 1446

US Model Treaty Art 10, 11, 22

Other Background Reading

Herzfeld ¶ 502, 503

BNA Portfolio No. 6585

Bittker & Lokken ¶ 67.6

Jason Schwartz & Alissa Kalinowski, *Rationalizing Lending Authorities*, 172 TAX NOTES FED. 65 (July 5, 2021).

University Policy on Accommodating Students with Disabilities:

Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students Office will provide documentation to the student who must then provide this documentation to the Office of Student Affairs when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.

University Policy on Academic Misconduct:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

****Netiquette: Communication Courtesy:** All members of the class are expected to follow rules of common courtesy in all email messages, threaded discussions and chats.

<http://teach.ufl.edu/docs/NetiquetteGuideforOnlineCourses.pdf>

Class Recordings: UF class recording policy states as follows: Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

Getting Help:

For issues with technical difficulties for E-learning in Sakai, please contact the UF Help Desk at:

- Learning-support@ufl.edu
- (352) 392-HELP - select option 2
- <https://lss.at.ufl.edu/help.shtml>

**** Any requests for make-ups due to technical issues MUST be accompanied by the ticket number received from LSS when the problem was reported to them. The ticket number will document the time and date of the problem. You MUST e-mail your instructor within 24 hours of the technical difficulty if you wish to request a make-up.**

Other resources are available at <http://www.distance.ufl.edu/getting-help> for:

- Counseling and Wellness resources

- Disability resources
- Resources for handling student concerns and complaints
- Library Help Desk support

Should you have any complaints with your experience in this course please visit <http://www.distance.ufl.edu/student-complaints> to submit a complaint.

Course evaluation:

“Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.”